



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/15/04	Bill No:	AB 1850
Tax:	Property	Author:	Cohn
Board Position:		Related Bills:	

## BILL SUMMARY

This bill would place into law specific requirements related to retention of business records, as defined, necessary for property tax purposes.

### Current Law

**Information Requirements.** Article 2 “*Information from Taxpayer*” of Chapter 3 of Part 2 of the Revenue and Taxation Code details various sections of code relating to access to business records by assessors:

- **Section 441 (d)** provides that at any time, as required by the assessor for assessment purposes, every person shall make available for examination information or records regarding his or her property or any other personal property located on premises he or she owns or controls. In this connection details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are to be considered as information essential to the proper discharge of the assessor's duties.
- **Section 442** requires that every person owning, claiming, possessing, controlling or managing property shall furnish any required information or records to the assessor for examination at any time.
- **Section 470** requires any person owning, claiming, possessing, or controlling property that is subject to local property tax assessment to provide to county tax assessors, upon request, business records relevant to the amount, cost, and value of all property that he or she owns, claims, possesses, or controls within the county.

**Penalties and Remedies.** If any person fails to furnish any information or records required under Article 2, the following remedies are available:

- **Section 454** provides that the assessor may subpoena and examine any person in relation to (a) any statement furnished by the person or (b) any statement disclosing property assessable that may be stored with, possessed or controlled by that person.
- **Section 468** authorizes the assessor to apply to the superior court of the county for an order requiring the person who failed to furnish such information or records to appear and answer questions concerning his property before such court at a time and place specified in the order. The court may so order in any county where the person may be found, but shall not require the person to appear before the court in any other county than that in which the subpoena is served.
- **Section 462** provides that a person is guilty of a misdemeanor who, after written request by the assessor, refuses to make available to the assessor any information

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that is required by subdivision (d) of Section 441. Upon conviction, the defendant may be punished by imprisonment in the county jail for a period not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. If the defendant is a corporation, it may be punished by an additional fine of two hundred dollars (\$200) for each day it refuses to comply with the provisions of this section, up to a maximum of twenty thousand dollars (\$20,000).

- In addition, **Section 441(h)** provides that if a taxpayer does not provide information required by Section 441(d) and introduces requested information at any assessment appeals board hearing, an appeal continuance must be granted.
- Pursuant to **Section 1609.4**, the county board of equalization may subpoena the books, records, maps, and documents of any person related to assessment appeal applications.

### **Proposed Law**

**Business Records.** This bill would state that every person owning, claiming, possessing, or controlling property subject to local assessment shall keep accurate and complete business records. *Section 470.1*

“Business records” would be defined to mean the books of account ordinarily maintained by the average prudent business person, including, but not limited to, accounting policies and procedures, chart of accounts, purchase orders, bills, receipts, invoices, shipping documents, contracts, capital expenditure proposals and authorizations, tapes, microfiche, or other documents of original entry supporting the entries in the books of account, and schedules or working papers used in connection with the preparation of federal, state, local, and property tax returns.

This bill specifies that business records should be maintained on:

- Contractual or financial agreements relative to the ownership, operation, and management of the business enterprise,
- Location of all tangible property, and
- The basis for the recorded cost of, and any adjustments to, the acquisition cost of all tangible property.

**Microfilm or Microfiche Records.** This bill would allow microfilmed or microfiche records to suffice as business records under specified instances. *Section 470.2*

**Electronic Records.** This bill would impose specific requirements related to the access of business records maintained in an automated data processing (ADP) or other electronic accounting system. *Section 470.3*

**Record Retention.** This bill would require any person owning, claiming, possessing, or controlling property used in a trade or business to maintain and preserve business records pertaining to that property for a period of not less than 4 years, or until the final disposition of all audits and all administrative or judicial proceedings relating to the lien date in question, whichever is later. If the taxpayer and the assessor agree in writing to extend the time for making an assessment, correction, or claim for refund, pursuant to Section 532.1, then the four-year period is extended by that same additional amount of time. This provision of law would not change the record retention requirements, as specified, for real estate brokers found in Section 10148 of the Business and Professions Code. *Section 470.4*

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**Failure to Keep Complete and Accurate Records.** This bill would specify that failure to maintain and keep complete and accurate records may result in penalties or other administrative actions. *Section 470.5*

**Assessment Appeals.** If the taxpayer files an assessment appeal, the appeals board will consider this failure in determining the credibility of the taxpayer's witnesses at any hearing related to this property. In addition, if the taxpayer introduces materials or information at an appeals board hearing that the assessor previously requested but was not provided, the assessor may request that the appeals board disallow the introduction of the material or information, or as an alternative, grant a continuance for a reasonable period of time. *Section 470.5*

**Penalties.** This bill would also establish specified penalties for violations of the record retention provisions. If a legal entity does not maintain records as required, a penalty of \$10,000 for each taxable year that the failure occurs. In addition, if a legal entity fails to produce, or causes another corporation or legal entity to fail to produce, records as required for more than 90 days after the day that the assessor mails notice of the failure to the corporation or legal entity, the corporation or legal entity shall pay a penalty of ten thousand dollars (\$10,000) for each 30-day period or fraction thereof, after the expiration of the 90-day period. This penalty is in addition to the penalty for failure to maintain records and may not exceed \$50,000 if the failure to produce records or the failure to cause another corporation or legal entity to produce records is not willful.

Any penalty levied may be appealed to the assessment appeal board which may abate the penalties, in whole or in part, if it finds that failure to maintain records was the result of factors beyond the taxpayer's control. *Section 470.5(b)*

**Records Submitted by Authorized Representatives.** This bill would require that a business record submitted to the assessor directly from an authorized representative of the taxpayer be accompanied by an affidavit signed under penalty of perjury by the owner, general partner, or officer of the corporation attesting to its accuracy and authenticity as an official document or record of the business. (Proposed 470 (c))

### **In General**

**Business Personal Property.** Personal property used in a trade or business is generally taxable. Personal property is not subject to the valuation limitations of Proposition 13. Personal property is valued each lien date at current fair market value. However, it is not administratively possible to individually determine the fair market value of every item of personal property used by all of the businesses in California every year. Consequently, mass appraisal techniques are necessary to complete the annual reassessment process

**Annual Property Statements – Self Reported.** Revenue and Taxation Code Section 441 requires every person owning taxable personal property having an aggregate cost of \$100,000 or more to annually file a property statement with the assessor. The annual property statement is the basis for the annual valuation.

**Valuation Process.** Generally, the valuation of personal property is based on the acquisition cost of the property. The acquisition cost is multiplied by a price index, an inflation trending factor based on the year of acquisition, to provide an estimate of its reproduction cost new. The reproduction cost new is then multiplied by a depreciation index, also called percent good tables, to provide an estimate of the depreciated reproduction cost of the property (reproduction cost new less depreciation). The reproduction cost new less depreciation value becomes the taxable value of the property for the fiscal year.

**Mandatory Audits of Businesses.** Revenue and Taxation Code Section 469 requires county assessors to audit, at least once every four years, the books and records of any taxpayer engaged in a profession, trade, or business, if the taxpayer has assessable trade fixtures and business tangible personal property valued at \$400,000 or more. These statutorily required audits are commonly referred to as “mandatory audits.” Additionally, the assessor may audit the books and records of taxpayers with holdings below \$400,000 in value under the authority of Revenue and Taxation Code Section 470. These audits are referred to as “nonmandatory audits.” Generally, assessors perform both mandatory and nonmandatory audits to ensure that the audit program includes a representative sample of all sizes and types of property.

#### **COMMENTS:**

1. **Sponsor and Purpose.** This bill is sponsored by the Santa Clara County Assessors Office to clarify exactly what records a business must retain for property tax purposes and for how long.
2. **Proponents state that the existing laws allowing the assessor to access business records are so broad that its practical application is insufficient.** Proponents note that while the laws currently on the books would appear to be sufficient they face difficulty with some corporations that will not work cooperatively with them in providing necessary information when the company is being audited. Assessors report that during the mandatory audit of a business, when documentation is necessary to support prior year’s filings, some taxpayers have incomplete records or high-level summary spreadsheets and indicate they were unaware it was necessary to keep or maintain such records. Others withhold or ignore requests for information or documents by assessors.
3. **Opponents state that the proposed definition of “business records” is overly broad and would be onerous to comply with and does not limit the records to those that are relevant to the assessment function.** Opponents’ note that this bill could impose fines on the failure to maintain records whether or not those records were actually relevant to the assessment of the property.

4. **The business record requirements of this bill are similar to Board of Equalization regulations for the various taxes and fees it administers** Regulation 1698, applies to Sales and Use Taxes; Regulation 4901, which is substantially the same relates to the special taxes and fee programs; and Regulation 1031 is specific to the Timber Yield Tax.

Sales and Use Tax <http://www.boe.ca.gov/pdf/reg1698.pdf>

Special Taxes and Fees <http://www.boe.ca.gov/pdf/reg4901.pdf>

Timber Yield Tax <http://www.boe.ca.gov/proptaxes/pdf/r1031.pdf>

### **COST ESTIMATE**

The Board would incur insignificant costs (less than \$10,000) in informing and advising county assessors, the public, and staff of the change in law.

### **REVENUE ESTIMATE**

This bill has no direct revenue impact.

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